

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: February 1-2, 2006

Reference No.: 2.4a.(1)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla G. Rhinehart
Division Chief
Right of Way and
Land Surveys

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19233, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19233 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19233 – Citibank, FSB, a Federal Savings Bank, successor in interest to Cenfed Bank, etc., et al. 12-Ora-90-PM 12.05 - Parcel 102208-1, 3 - EA 056209 - Certification Date: 02/01/06 - RTL Date: 03/01/06. Conventional highway – grade separation. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, and a temporary easement for construction purposes. Located in the unincorporated area of the county of Orange, east of Imperial Highway, north of Esperanza Road. APN 349-691-31.

Objections to the above Resolution of Necessity have been submitted in writing by the owners in lieu of a personal appearance before the Commission. Attached is the owner's December 22, 2005, letter containing the written objections to the Resolution of Necessity, as well as the Department's written response dated December 30, 2005.

Attachments



611 ANTON BOULEVARD, FOURTEENTH FLOOR
COSTA MESA, CALIFORNIA 92626-1931
POST OFFICE BOX 1950
COSTA MESA, CALIFORNIA 92628-1950
TELEPHONE 714-441-5100 FACSIMILE 714-546-9035
www.rutan.com

ORANGE COUNTY

PALO ALTO
(650) 320-1500

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

David B. Cosgrove
Direct Dial: (714) 662-4602
E-mail: dcosgrove@rutan.com

December 22, 2005

Executive Director of the
California Transportation Commission
P. O. Box 942873-0001
Mail Station 52
Sacramento, CA 94273

Re: Charter Hill Homeowners Association

Dear Sir:

This office, and the undersigned in particular, represent Charter Hill Homeowners Association, the party that is the equitable owner of property currently being considered for acquisition in connection with the improvements pending on State Route 90, Imperial Highway. I say equitable owner, because the record owner appears to be Cenfed Bank, which I understand is now held by a Citibank affiliate. The property involved consists of portions of the common area of the Charter Hill condominium complex. We believe the applicable CCRs for the property make it clear this common area property is to be, and is, owned by the Charter Hill Homeowners' Association. It is unclear how nominal title has come to be held in Cenfed, but we suspect it has devolved to the bank through transfers originally tracing to the original developer, and the necessary documentation to perfect nominal title in the Charter Hill Homeowners' Association was not properly completed. We have corresponded with attorneys for the nominal title holder, requesting a quitclaim, and await response.

I have previously corresponded on this matter on behalf of my client in response to a notice of a pending resolution of necessity, requesting the opportunity to appear and be heard. That request resulted in reference of my client's questions and issues to what was formerly called "First Level Review," and a meeting was held at District 12 offices to discuss the matter on Wednesday, December 7, 2005. District staff has been in communication with me following that meeting, and has, I am pleased to report, been responsive to my client's concerns.

I am writing to summarize on behalf of my client the issues raised. First, in connection with the area denominated Parcel 102208-1 and 102208-3, my client requested the State to examine whether the scope of the take should be expanded, to be congruent with the configuration of the existing wall located north of the Charter Hill complex. We identified for staff an area that would lie between the State's right-of-way and the existing perimeter wall, which would be difficult to access and maintain, and suggested that this piece may be an uneconomic remnant. Staff reviewed our concerns on this matter, and supplied a letter to me

dated December 21, 2005, which indicated the State has identified an area of approximately 7800 square feet, which it has preliminarily valued. Provided this letter ripens into an offer for the acquisition of the area described, and the offer is made to my client, this addresses our concern regarding the creation of an uneconomic remnant. Staff's responsiveness on this issue is appreciated.

Second, I raised questions with respect to the written summary of the appraisal which was the basis of the offers. I questioned whether the appraisals were sufficiently timely, given the dated nature of the comparable sales upon which the opinions of value were apparently based. I also indicated that there was a conclusion of no severance damage on any of the parcels, which my client disagrees with. Understanding that questions of compensation are generally excluded by Caltrans in its consideration of the findings leading to a resolution of necessity, there still remained the issue of whether the appraisal summary statement provided sufficient narrative description of the basis for conclusion of finding no severance damage, as called for under Government Code § 7267.2.

In response, Staff has provided an updated appraisal summary statement, and an expanded narrative regarding conclusions on severance. My client does not necessarily agree with all of the value conclusions reached, but remains mindful that final issues of total compensation are not being considered at this time. Given the updated summary statement, my client is withdrawing objection to the resolution of necessity based on the adequacy of the written summary attending the precondemnation offer.

Third, with respect to the footing easement which is denominated Parcel 102220-2, I requested to be advised what type of restrictions there are on the footing easement, and whether it excluded any right of surface entry. I was advised that there were no such exclusions in the footing easement.

Fourth, I requested an itemization of the values for the Improvements component of the offer for Parcels 102145-1 and 102145-2. That has been provided.

I am hopeful that any remaining issues regarding the uneconomic remnant raised by my client will be resolved before the resolution hearing date, but because of the press of agenda preparation deadlines, am forwarding this letter, at the request of District 12, and request that you consider it in lieu of a personal appearance on behalf of my client. That remnant matter remains the sole issue raised by the proposed resolution of necessity not yet fully addressed, and understandably will require resolution of title questions I am working on with Citibank before it can be finally resolved. In my opinion, Staff's work on the matter is taking us well in the direction of meeting my client's concerns, and for that, my client is grateful.



Executive Director of the
December 22, 2005

Page 3

Please contact me if you have any comments or questions regarding any of the foregoing.

Very truly yours,

RUTAN & TUCKER, LLP

David B. Cosgrove

DBC:tr

cc: Deborah C. Meyers
Right of Way Project Delivery Manager
District 12
Right of Way Field Office
3337 Michelson Drive, Suite 380
Irvine, CA 92612-1692

DEPARTMENT OF TRANSPORTATION**SOUTHERN RIGHT OF WAY REGION**21073 PATHFINDER ROAD, SUITE 100
DIAMOND BAR, CA 91765

PHONE (909) 468-1500

FAX (909) 468-1501

TDD (800) 735-2929



December 30, 2005

RUTAN AND TUCKER LLP
ATTORNEYS AT LAW
611 ANTON BOULEVARD, 14TH FLOOR
COSTA MESA, CALIFORNIA 92628-1950

12-ORA-90-11.8/12.4

EA: 056209

Parcels: 102145, 102220 & 102208

Grantor: Cenfed Bank

Attention: Mr. David Cosgrove, Esquire

RE: Charter Hills Homeowners Association

Dear Mr. Cosgrove:

This letter is in response to your letter dated December 22, 2005 addressed to the Executive Director of the California Transportation Commission. As you noted in your letter, the staff in the Irvine Right of Way Department have been in communication with you, and have responded to the issues raised during the Condemnation Review Hearing on December 7, 2005 that were of concern to your client, Charter Hills Homeowners Association. Some of the issues raised on the proposed acquisitions of the above referenced parcels that have been addressed are the adequacy of the offer to acquire the parcels, information regarding the types of restrictions, if any, for the Footing Easement and an updated Appraisal Summary Statement.

However, your letter also states that the District has not fully addressed the issue of the uneconomic remnant. On December 23, 2005, Revised Offers were presented to you for each of the above parcels with the corresponding updated Appraisal Summary Statements. During this meeting the uneconomic remnant was addressed and a written estimate was given to you. As you know, the Right of Way Branch will provide your client with an offer to acquire the property that you have indicated is an uneconomic remnant after the parcel has been certified as a right of way requirement and has been mapped by the Project Design and Engineering staff in the District.

It is my understanding that you will continue to work with the attorneys of the nominal title holder, Citibank, to completely resolve the title issues as stated in your letter.

The Acquisition Branch, will contact you regarding an offer to acquire the 7,800 \pm square foot property designated as an uneconomic remnant as soon as possible. If you have any additional questions or need any additional information please contact Patrice Games at (949) 724-2417.

Sincerely,

for Deborah C. Meyers
Right of Way Project Delivery Manager
Southern Right of Way Region
Irvine Office
(949) 440-3439
(949) 724-2411 Fax

cc DGebbers

Resolution of Necessity Appearance Fact Sheet

PROJECT DATA

12-Ora-90-KP 18.99/20.28 PM 11.8/12.5

Location:

On State Route 90 (SR-90) in the county of Orange and in the cities of Anaheim and Yorba Linda.

Limits:

SR-90 from 0.95 kilometers (km) south of Kellogg Drive to La Palma Avenue.

Contract Limits:

The proposed project provides for a railroad grade separation structure on SR-90 (Imperial Highway) at the existing Santa Ana Canyon BNSF Railroad crossing near Esperanza Road/Orangethorpe Avenue intersection, in the county of Orange (unincorporated area) and the city of Anaheim. It is proposed to widen Imperial Highway from five to eight lanes south of Esperanza Road/Orangethorpe Avenue intersection and north of the intersection, eight lanes will transition to four lanes.

Cost:

Construction--\$ 40,000,000 R/W--\$ 25,000,000

Funding Source:

Regional STIP

Number of Lanes:

Existing: Two to five lanes in both directions

Proposed: Eight lanes both directions south of Esperanza/Orangethorpe Avenue intersection and north of the intersection, eight lanes will transition to four lanes.

Proposed Major Features:

The proposed project provides for a railroad grade separation Structure on SR-90 (Imperial Highway) at the existing Santa Ana Canyon BNSF Railroad crossing near Esperanza Road/Orangethorpe Avenue intersection, in the county of Orange (unincorporated area) and the city of Anaheim. It is proposed to widen Imperial Highway from five to eight lanes south of Esperanza Road/Orangethorpe Avenue intersection and north of the intersection, eight lanes will transition to four lanes.

Traffic:

Existing (year): 26,000 ADT (1994) SR-90
Proposed (year): 53,000 ADT (2020) SR-90

PARCEL DATA

Property Owner: Citibank, FSB, a Federal Savings Bank, successor in interest to Cenfed Bank, etc., et al.

Parcel Location: Assessors Parcel Number (APN) 349-691-31
East of Imperial Highway, north of Esperanza Road.

Present Use: Planned Unit Development R4-PD (3000)

Area of Property: 14,349 Square Feet

Area Required: Parcel 102208-1 = 538 square feet in fee
Parcel 102208-3 = 700 square feet in temporary construction easement

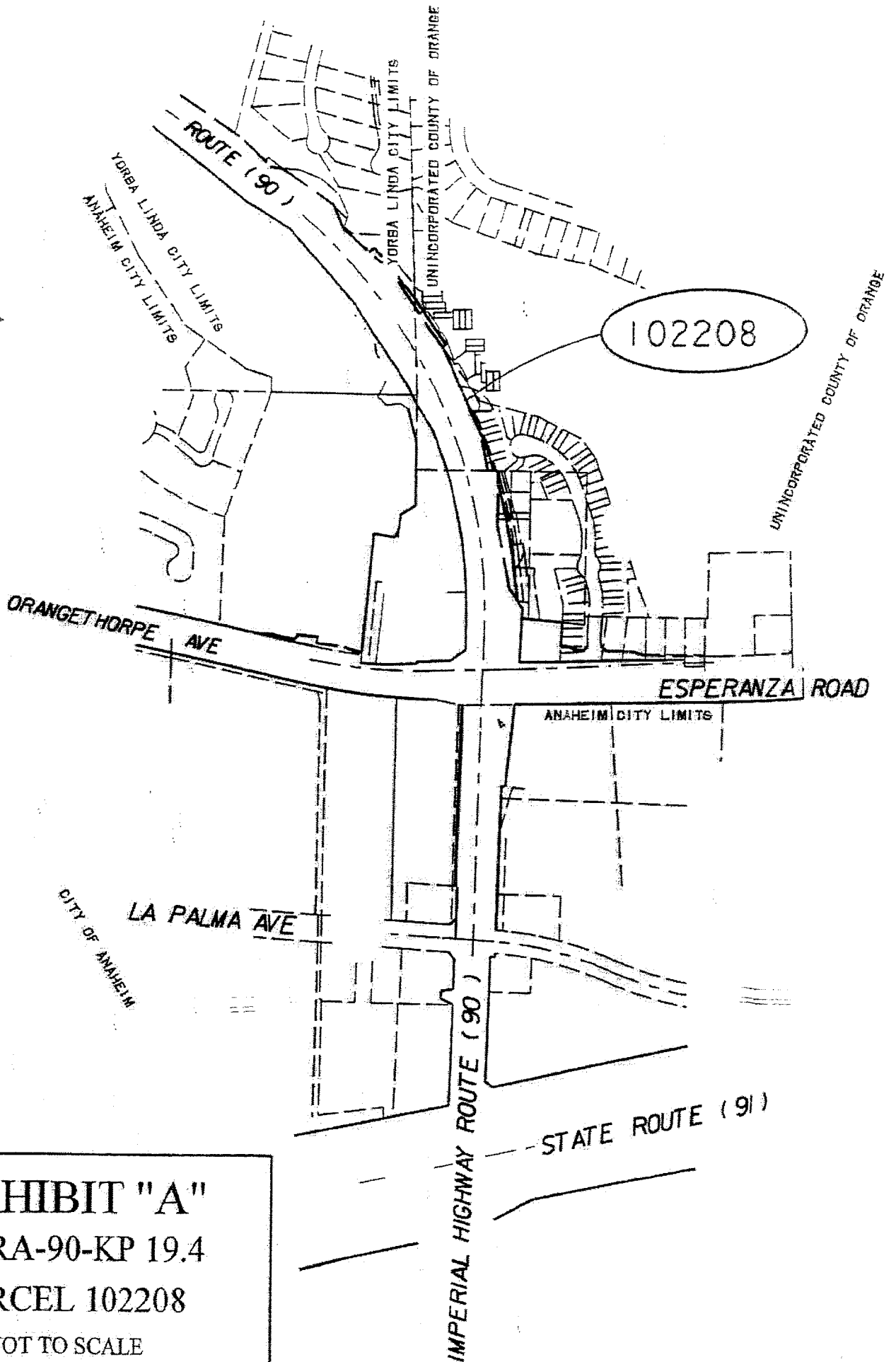


EXHIBIT "A"

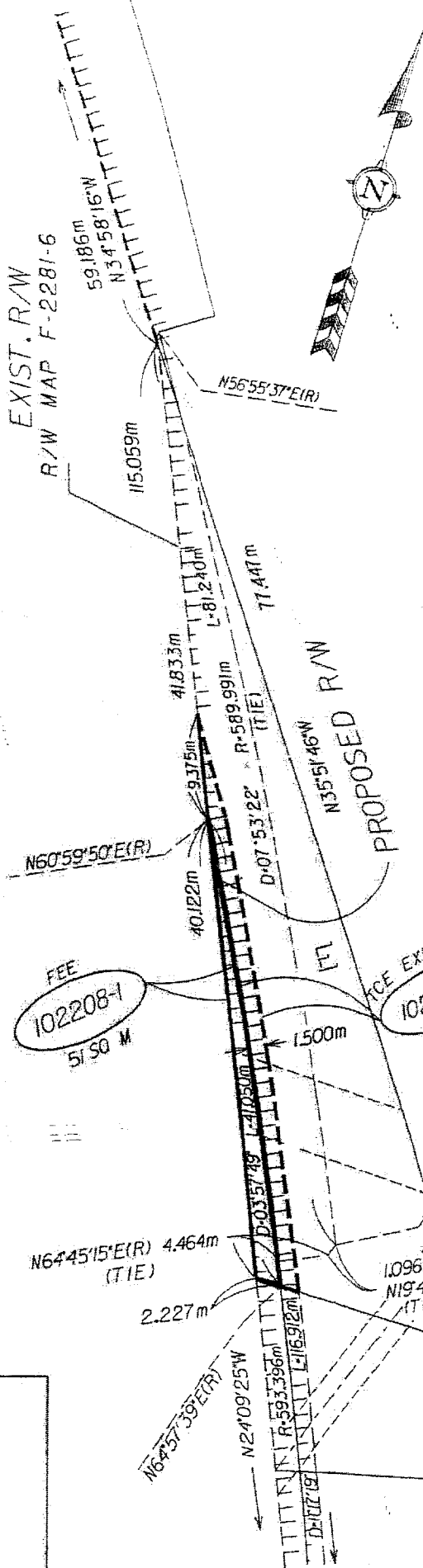
12-ORA-90-KP 19.4

PARCEL 102208

NOT TO SCALE

YORBA LINDA CITY LIMITS
 EAST LINE OF 2ND CLASS ALLOTMENT
 UNINCORPORATED COUNTY OF ORANGE
 FEB. 3, 1974

IMPERIAL HIGHWAY SR (90)
 SR 99-025/25
 D-54°57'56"
 L-584.807m



COUNTY OF ORANGE

194/30-33
 5400
 194/30-33

EXHIBIT "B"
 12-ORA-90-KP 19.4
 PARCEL 102208
 NTS